In the

# United States Circuit Court of Appeals

## For the Ninth Circuit

No. 5735

YEE MON,

*Appellant*

vs.

LUTHER WEEDIN, as United States Commissioner of Immigration at the Port of Seattle, Washington,

*Appellee.*

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

HONORABLE JEREMIAH NETERER, *Judge*

## Brief of Appellee


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### STATEMENT OF THE CASE

The appellant, YEE MON ( or MOON), is of the Chinese race and claims to have been borne in China on a Chinese date equivalent to August 27, 1914. He never resided in the United States. He arrived at the

Port of Seattle, Washington, May 7, 1928, on the S.S. "President Pierce," and applied for admission into the United States as the son of YEE NGOEY, a native born citizen of this country. After the usual hearings, he was refused admision by a Board of Special Inquiry at the Seattle, Washington, Immigration Office. Thereafter he appealed from the decision of the Board of Special Inquiry to the Secretary of Labor, his appeal was dismissed by the Secretary of Labor and his return to China directed. Subsequently he filed a petition for a writ of Habeas Corpus in the United States District Court for the Western District of Washington, Northern Division. The case now comes before this Court on appeal from the decision of the District Court denying the Writ.

## ARGUMENT

The nativity of the alleged father, YEE NGOEY was conceded by the Immigration Officials. The appellant was refused admission by the Board of Special Inquiry for the reason that it did not satisfactorily appear that he (appellant) was the son of his alleged father, YEE NGOEY, nor that he (appellant) was a citizen of the United States, nor that he had any right to admission under the Chinese Exclusion Law; and

for the further reason that he was an alien ineligible to citizenship inadmissible under Section 13 (c) of the Immigration Act of 1924. Were the relationship as claimed, the appellant would be entitled to recognition as a citizen of the United States under Section 1993 R. S. (8 USCA Sec. 6), and neither the Chinese Exclusion Laws nor the Immigration Act of 1924 would have any force or effect. Consequently the claimed relationship is the only question at issue.

Section 23 of the Immigration Act of 1924 (43 Stat. L. Ch. 190, p. 153) places the burden of proof upon appellants for admission into the United States, and this doctrine has been uniformly upheld by the Courts.

Rule 10, subdivision 3, of the Chinese Rules of the Department of Labor of Oct. 1, 1926 provides as follows:

> "In every application for entry as the child of a citizen there shall be exacted *convincing proof* of relationship asserted as the basis for admission *******" (italics ours)

While it is true, as stated by counsel in his Brief that YEE NGOEY has claimed a son of the name and approximate age of the appellant on various occasions,

and that such claim has also been supported by statements of two alleged brothers of appellant, there are certain discrepancies in the testimony which plainly indicate that the claimed relationship does not exist.

The appellant states that SEUNG WAN Village, where his older brothers were born, is about 1 or 2 lis *East* of his Village (approximately 5 to 10 city blocks), while the alleged father states that this Village is a little over 1 poo (over three miles) *West* of his Village.

The appellant states that his father is the owner of a piece of rice land, while the alleged father claims that he owns no rice land and never did own any.

The appellant states that there is no ancestral hall near his village, while the alleged father claims that the SIN DEUNG ancestral hall is located only about ½ li (2 to 3 city blocks) West of his village.

The alleged father states that about 2 years ago, a new house was built by JU LUNG in the 4th or 5th row of their village, the location of said house being in the next row to that in which the alleged father and appellant claim to have lived. The appellant has no knowledge regarding the erection of this house, and states that he has no recollection of any new residences or other buildings ever having been built in his village. Later, however, he stated that a man named YUK KUI had built a house several years ago. The appellant states that this YUK KUI's house is opposite the small door of his house, and that YUK KUI's

other name is LAI GUI. The alleged father states that this man's other name is TUNG GUN.

The appellant at first testified that he had never seen either of his elder brothers, for the reason that, before coming to the United States, they had lived in the SEUNG WAN Village, where they were born, while he himself was born in WAI LUNG LEE Village and had always lived there. He further stated that the said brothers had never lived in the WAI LUNG LEE Village, and that he himself had never been in the SEUNG WAN Village; also that he did not know whether or not these brothers ever attended school. This testimony was given *in the forenoon.* When his examination was resumed *after the noon recess,* the appellant made the statement that his brother, YEE SANG would testify in his behalf, and claimed that his previous testimony regarding his brothers, YEE SANG and YEE TOY was a mistake; that he had thought the matter over and then remembered that he had seen these two brothers and that both had slept in the same house with him in the WAI LUNG LEE Village. He also claimed to remember that they had slept in the large doorside of his house, which was the taller of the two brothers, what time in the day they had started from the home village with their father for this country, and that their destination was Cleveland at that time. The appellant also stated that his brother, YEE JUNG, had attended school from the time he was 9 until he was 14, and that he and YEE JUNG had attended school together. The alleged father testified that YEE JUNG had never attended school for the reason that he was too young.

The knowledge which appellant showed after the noon recess, contrasted with his ignorance prior to said recess is manifestly explainable only on the hypothesis that, during said recess, he must have studied some "coaching paper" which was in his possession, and the contents of which he had forgotten when testifying in the forenoon. This phase of the case is somewhat similar to that of *Moy Chee Chong V. Weedin* 28 F (2d) 263, decided by this Court September 4, 1928. In that case the record of the applicant's testimony had been forwarded to Minneapolis for statements by his alleged father and brother and, after said testimony had been returned to Seattle, the applicant, who had previously testified that his grandmother was living, came to the conclusion that she had been dead for several years. In his opinion, Circuit Judge Gilbert said:

> "******it is fairly inferable that in the meantime he had received news from Minneapolis advising him of the statements made by his alleged father and brother ******"

and did not accord the applicant any credit for changing his testimony to agree with that of his alleged father and brother.

On his return from China the alleged father stated at San Francisco, June 1 1915, that he had three sons. and that his third son, who is claimed to be the appellant, was born CR 3-9-2 (Oct. 20, 1914). Again at Chicago Nov. 12, 1919, he gave the same date for the birth of his third son. It was not until he testified at Boston December 28, 1922, that he gave the date C. R. 3-7-7 (August 27, 1914), which is now claimed to be the correct date of appellant's birth. This would appear to indicate that the date now given is simply one arbitrarily agreed upon between the alleged father and his alleged sons, the alleged father apparently having forgotten the date which he had given on the first two occasions on which he testified. If the alleged father had any such son as the appellant, there appears to be no conceivable reason why he should not have known the date of his birth when he returned from China in 1915, and when the said son was less than one year old.

Various other discrepancies and inconsistencies are commented on in detail in the memorandum of the chairman of the Board of Special Inquiry (pp 59-53 of the record), and the memorandum of the Board of Review dated October 4, 1928, which it is not thought necessary to review further here. It seems sufficient to state, as will readily be apparent by reference there-

to, that they, together with the statements referred to above, constitute a basis upon which the immigration officials could reasonably have reached the conclusion at which they arrived. The opinion in *Go Lun V. Nagle*, cited by counsel, has no application.

The burden was on the appellant to prove the claimed relationship, and not on the Government to disprove it.

> *Christy v. Leong Don* (CCA 5), 5 F (2d) 135; certiorari denied, *Leong Don v. Chirsty*, 289 U. S. 560, and numerous other authorities.

Section 17 of the Immigration Act of February 5, 1917 (39 Stat. 887, 8 USC 153) provides for the establishment of Boards of Special Inquiry, defines the authority and duties of such Boards, and further provides that:

> "* * * In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, *the decision of a Board of Special Inquiry adverse to the admission of such alien shall be final unless reversed on appeal to the Secretary of Labor.* * * *" (Italics ours)
> In the case of *Chin Share Nging v. Nagle*, 27 F. (2d), 848. this Court said:
> "* * * * The conclusions of administrative officers upon issues of fact are invulnerable in the

> Courts, unless it can be said that they could not reasonably have been reached by a fair-minded man, and hence are arbitrary.* * "

In the case of *Zakonaite v. Wolf*, 226 U. S. 272 33 Sup. Ct. 31, 57 L. Ed. 218, the rule was applied that, if it appears that there was some evidence, and sufficient to satisfy a reasonable man, that the Chinese person claiming the rights of American citizenship was not entitled thereto, he must be excluded.

On collateral review of deportation proceedings in habeas corpus, it is sufficient if some evidence supported the order, in the absence of flagrant error.

> *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U. S. 103.

Unless it affirmatively appears that the executive officers have acted in some unlawful or improper way and abused their discretion, their finding upon a question of fact must be regarded as conclusive, and is not subject to review by the courts.

> *U. S. ex rel. Leong Ding v. Brough* (CCA 2), 22 F (2d) 926.

> *United States v. Ju Toy*, 198 U. S. 253, 49 L. Ed. 1040.

*Chin Yow v. United States*, 208 U. S. 8, 52 L. Ed 369.

*Low Wah Suey v. Backus*, 225 U. S. 460.

The finality of the decisions of immigration officials in exclusion cases, *on questions of fact*, has also been upheld by the Supreme Court of the United States in the following cases:

*Nishimura Ekiu v. United States*, 142 U. S. 651.

*Lem Moon Sing v. United States*, 158 U. S. 538.

*Lee Lung v. Patterson*, 186 U. S. 168.

*Tang Tun v. Edsell*, 223 U. S. 673.

*Tulsidas v. Insular Collector*, 262 U. S. 258.

*Quon Quon Poy v. Johnson*, 273 U. S. 352.

See also:

*United States v. Rogers*, 65 F. 787.

*Harlan v. McGourin*, 218 U. S. 442, 54 L. Ed. 1101.

*Cary v. Curtis*, 3 How. 236, 11 L. Ed. 576.

No allegation has been made that the appellant was deprived of any right to which he was entitled in the course of his hearing before the immigration officials, or that the *conduct* of said hearing was in any respect other than fair and regular. Inasmuch as the question involved - *relationship - is purely a question of fact,* the decision of the said officials is final.

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## CONCLUSION

The appellant was accorded a fair hearing by the immigration officials, and failed to sustain the burden which was upon him to establish his claims. The evidence did not constitute convincing proof that the appellant was the son of his alleged father, and was not of such a nature as to require, as a matter of law, a favorable finding in that respect. The contradictory and inconsistent statements in the record constitute evidence upon which the immigration offiicials could reasonably arrive at their excluding decision. The said officials did not abuse the discretion committed to them by the statute, and their excluding decision was not arbitrary or capricious, or in contravention of any

rule of law. The District Court did not commit error in denying the Writ of Habeas Corpus, and its decision should be *affirmed.*

Respectfully submitted

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